

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

SALVADOR PULIDO VALENCIA,  
and VICTOR HUGO SANTA CRUZ  
BARRIGA,

Defendants.

NO: CR-12-2001-RMP

ORDER DENYING DEFENDANTS'  
MOTION TO SEVER

This matter comes before the Court on reconsideration of Defendants' motion to sever, ECF No. 69. Mr. Barriga contends that introduction of his co-defendant's statements at trial would violate his rights under the Confrontation Clause. Mr. Barriga proposes severance of the co-defendants' trials or suppression of Mr. Valencia's statements in their entirety. ECF No. 69.

The Court initially entered an Order granting the motion to sever, ECF No. 138, but later granted the Government's motion for reconsideration after the

1 Government filed redacted versions of the statements at issue that it argued could  
2 cure any *Bruton* issues. ECF No. 143. The Court directed the parties to file briefs  
3 regarding whether the Government's submission of the proposed redactions  
4 eliminated the need for separate trials. ECF No. 143. No party filed any further  
5 briefing on the matter.

6 In *Bruton v. United States*, the Supreme Court held that a defendant's rights  
7 under the Confrontation Clause are violated when a non-testifying co-defendant's  
8 confession naming the defendant as a participant is introduced at their joint trial,  
9 even where the court issued a limiting instruction directing the jury to disregard the  
10 co-defendant's confession when considering the defendant's guilt. 391 U.S. 123  
11 (1968).

12 The Court subsequently narrowed the scope of *Bruton* in *Richardson v.*  
13 *Marsh*. 481 U.S. 200 (1987). In *Marsh*, the Court held that a defendant's  
14 Confrontation Clause rights are not violated by the introduction of a non-testifying  
15 co-defendant's confession when the confession was redacted to eliminate any  
16 reference to the defendant's existence, and the jury was given a proper limiting  
17 instruction to apply the evidence of the confession only to the co-defendant. *Id.* at  
18 211. The Court reasoned that such a confession, on its face, did not incriminate the  
19 defendant, but only became incriminating when linked with evidence introduced  
20 later at trial. *Id.* at 208.

1 In the case of *Gray v. Maryland*, the Supreme Court held inadmissible a  
2 non-testifying co-defendant's confession that was redacted simply by replacing the  
3 defendant's name with a blank space or other obvious indication of deletion. 523  
4 U.S. 185 (1998). The Court reasoned that obvious deletions overemphasize the  
5 alterations and point directly towards the non- confessing defendant. *Id.* at 192-95.

6 The *Gray* Court distinguished obvious deletions from the redactions found  
7 permissible in *Richardson*. The obvious deletions in *Marsh* encourage the jury to  
8 draw an immediate and vivid inference that the redaction refers to the co-  
9 defendant, whereas the wholesale redactions in *Richardson* only allowed the jury  
10 to draw a weaker inference based on other evidence introduced later in the trial. *Id.*  
11 at 195-96 (discussing *Richardson*, 481 U.S. at 208-09). While the tendency to  
12 draw these weaker inferences may be cured by proper limiting instructions,  
13 immediate and vivid inferences may be sufficiently damaging that a limiting  
14 instruction will have little effect on the jury. *Id.*

15 In this case, Mr. Barriga and Mr. Valencia were apparently the only persons  
16 present at the unloading of the truck, the time period when their respective  
17 statements tend to incriminate their co-defendant. Thus, any mention of the  
18 presence of another person could only refer to the respective co-defendant. In light  
19 of the inevitable conclusion that any mention of another person is inculpatory to  
20 the co-defendant, the Court finds under *Bruton*, *Richardson*, and *Gray* that all

1 references to the respective co-defendant's existence must be redacted from Mr.  
2 Barriga's and Mr. Valencia's statements, and any reference to the existence of any  
3 other person must be redacted from the sections of those statements pertaining to  
4 the unloading of the truck.

5 The Government has offered redactions and edits to cure obvious *Bruton*  
6 issues. For example, the Government proposed changing a sentence in Mr.  
7 Valencia's statement to remove reference to any person assisting Mr. Valencia in  
8 unloading the truck box. While this edit cures any *Bruton* problem as to Mr.  
9 Barriga, it renders the statement misleading as to Mr. Valencia's conduct. The  
10 Court rejects the Government's edited statement under Fed. R. Evid. 403, because  
11 the probative value of the statement as altered by the Government would be  
12 substantially outweighed by the dangers of unfair prejudice and misleading the jury  
13 as to Mr. Valencia's culpability.

14 However, the Court accepts the Government's proposed redactions in ECF  
15 No. 142 as an acceptable resolution to the *Bruton* issue, with the following  
16 changes:

- 17 • Paragraph five of Mr. Valencia's statement, referring to his association  
18 with Mr. Barriga, must be deleted in its entirety;
- 19 • The second sentence in paragraph seven of Mr. Valencia's statement,  
referring to his assisting in unloading the truck box, must be deleted; and
- 20 • The final sentence of Mr. Barriga's statement must be deleted because of  
its reference to Mr. Valencia's nickname, Chava.

1 In addition, the Court will read a limiting instruction to the jury that each  
2 defendant's statement may not be considered against his co-defendant.

3 Accordingly, **IT IS HEREBY ORDERED** that **ECF No. 69**, Defendant  
4 Barriga's Motion to Sever Trial is **DENIED**.

5 The District Court Clerk is directed to enter this Order and provide copies to  
6 counsel.

7 **DATED** this 19th day of September 2012.

8  
9 *s/ Rosanna Malouf Peterson*

10 ROSANNA MALOUF PETERSON  
11 Chief United States District Court Judge  
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